

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **VICE CHAIRMAN AL BISHOP**, on February 8, 1999  
at 11:00 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SR 3  
Executive Action: SR 3

**HEARING ON SR 3**

**Sponsor:** SEN. LORENTS GROSFIELD, SD 13, Big Timber

**Proponents:** Jean Turnage, Chief Justice of the Montana Supreme  
Court

**Opponents:** None

**Opening Statement by Sponsor:**

**SEN. LORENTS GROSFIELD, SD 13, Big Timber,** introduced SR 3, Confirmation of Chief Water Judge, C. Bruce Loble. This is a four year term. The appointment would be effective through June 30, 2001. He related that Judge Loble has served the Water Court very well and is highly thought of, especially in all arenas that deal with water rights.

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**Proponents' Testimony:**

**Jean Turnage, Chief Justice of the Montana Supreme Court,** recommended the confirmation of C. Bruce Loble as Chief Water Judge. The first Chief Water Judge was retired District Judge Bill Lesley. He passed away in 1990, very close to the end of his term. The Judicial Nomination Committee provided names of applicants for the position. C. Bruce Loble was the only applicant who had experience as a trial lawyer who had worked with water law.

Judge Loble was appointed on May 14, 1990 and then reappointed on June 22, 1993. The following reappointment was on June 30, 1997, and this term will expire June 30, 2001.

Nearly all judgeship vacancies are filled by the appointment of the Governor, but the legislature decided that the Chief Justice of the Supreme Court would select the Chief Water Judge.

Judge Loble has served the Water Court very well. **Chief Justice Turnage** asked the Committee to confirm his appointment so that he may complete the balance of this term.

**Opponents' Testimony:** None

**Presentation - C. Bruce Loble:**

**C. Bruce Loble, Chief Water Judge,** related that the Montana Constitution was the start of this process in 1972 when it stated that all water rights needed to be centralized and catalogued. In 1973 the Legislature passed the Montana Water Use Act of 1973 which stated that from and after that date, if a water right were to be changed it would be necessary to go through the Department of Natural Resources (DNRC). An application would need to be filed and criteria established by the legislature would need to be satisfied. The Constitution stated that all existing water rights were recognized and confirmed by the 1972 Constitution.

The 1977 Legislature studied the process and came up with the adjudication process that required all water users to file their water right claims by April 30, 1982. In excess of 219,000 claims have been filed to date. Less than 5,000 of the claims were filed after April 30, 1982. Montana has been divided into 85 hydrologic basins and the Water Court is systematically proceeding through every basin quantifying the water rights. Every statement of claim is reviewed by the DNRC. It is then forwarded to the Water Court where it is reviewed. Every person in the basin is given notice. They are asked to look at their own water rights first. If a mistake is noted, an objection needs to be filed. Neighbors' water rights should also be reviewed and if a mistake is found an objection should be filed.

They have issued 55 decrees which include federal and Indian reserved water rights. The Reserved Water Rights Compact Commission is charged by the Legislature to negotiate with tribes and the federal government over their reserved water rights. Three compacts have been before the Montana Water Court. The Fort Peck Reservation and the Northern Cheyenne Reservation have compacts. The federal government has a compact with the National Park Service. When the Compact Commission comes to an agreement, this Compact needs to come before the Legislature. It is then approved by the Montana Water Court. **EXHIBIT(jus31a01)** - Map showing Montana General Adjudication Status as of January, 1999.

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**Questions from Committee Members and Responses:**

**SEN. HALLIGAN** asked for information regarding **Judge Loble's** staff and budget. **Judge Loble** explained that the Water Court is located in Bozeman. They have 11 FTEs which includes six water masters and four clerks of court. The water masters are usually lawyers with some knowledge and experience in water law. They act as evidentiary hearing officers. Their budget has come from special revenue funds and is approximately \$1.1 million per biennium.

**SEN. HOLDEN** inquired about the northeastern Montana project concerning the reservation and the extension of the water system. **Judge Loble** was not familiar with the project. If existing water rights were being changed, this would go through the DNRC. If the water rights are not pre-1973 water rights and new water rights were being acquired, this would also go before the DNRC.

**SEN. JABS** questioned whether the Water Court had jurisdiction over the individuals on Indian reservations. **Judge Loble** responded that they did not have jurisdiction over the

individuals but would have jurisdiction over their water rights. The Water Court is one of the few courts that has jurisdiction over federal and Indian water rights. This came about by the McKerran amendment which was passed by Congress in the 1950s. Typically, the federal government or Indian tribes cannot be brought into a state court for the purpose of resolving property rights which belong to them.

**SEN. BARTLETT** commented that this legislative session is in the process of eliminating administrative functions from the Resource Indemnity Trust (RIT) and replacing them with money generated from school trust lands. She questioned whether this would become the source of funding for the Water Court. **Judge Loble** responded that SB 49 is moving most of the executive agencies from RIT funding. These funds will be provided by the General Fund. However, the Water Court is still under RIT.

**CHAIRMAN BISHOP** asked if claims were still being filed by those who may have missed the filing date. **Judge Loble** explained that by April 30th of 1982, all water rights claims needed to be filed. If a claim was not filed, it was forfeited. **Judge Lesley** held a hearing on this process and determined that it was Constitutional. The Montana Supreme Court upheld **Judge Lesley's** decision. The legislature then reopened the opportunity to file claims in 1993. There was an opportunity from 1993 to July 1, 1996 to file late claims. The late claims were subordinate to some prior existing water rights. Some late claims had been mailed to the DNRC on April 30, 1982. The Legislature determined that claims that had been mailed before April 30, 1982 and received by the DNRC by May 7, 1982 would receive all priority except in relation to federal and Indian reserved water rights. Water rights that were received after April 30, 1982 and were not mailed could still be filed under the late claim bill. The priority date would be subordinate to all the federal and Indian reserved water rights plus all timely filed claims.

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**Closing by Sponsor:**

**SEN. GROSFIELD** remarked that it is good to have the same person in the Chief Water Judge position because it is important to keep the ongoing process. **Judge Loble** has the confidence of people who deal in water law. He urged concurrence with SR 3.

**EXECUTIVE ACTION ON SR 3**

**Motion/Vote:** **SEN. MCNUTT** moved that **SR 3 DO PASS. Motion carried unanimously - 9-0.**



**ADJOURNMENT**

Adjournment: 11.22 A.M.

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SEN. AL BISHOP, Chairman

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JUDY KEINTZ, Secretary

LG/JK

**EXHIBIT** (jus31aad)